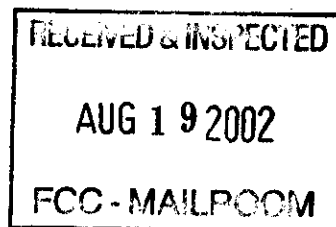




Federal Communications Commission
Washington, D.C. 20554

DA 02-2024

August 15, 2002



Mr. Warren C. Havens
2509 Stuart Street
Berkeley, CA 94705

Re: Petition for Declaratory Rulings Concerning the Commission's Rules as Applied to AMTS Licenses (filed Jan. 24, 2002); Petition for Declaratory Ruling Concerning the Requirements of the Application Suspension, PR Docket No. 92-257 (filed Mar. 14, 2002)

Dear Mr. Havens:

By this letter, we address the above-referenced petitions for declaratory ruling. In the first petition, filed on January 24, 2002, you raise a number of questions regarding certain rules governing Automated Maritime Telecommunications System (AMTS) site-based licenses. We also address the petition for declaratory ruling, filed on March 14, 2002, in which you raise a number of questions regarding the Commission's November 16, 2000 suspension of the acceptance of applications for new AMTS licenses.¹ For the reasons stated below, your January 24, 2002 petition is granted in part and denied in part, and your March 14, 2002 petition is denied.

As an initial matter, we note that some² of your January 24, 2002 questions regarding the AMTS construction³ and coverage requirements⁴ are duplicative of questions that you have raised in a separate proceeding involving the renewal of the license of Regionet Wireless License, LLC (Regionet) to serve the Atlantic Coast under Call Sign WRV374.⁵ In addition, all of your March 14, 2002 questions regarding the Commission's AMTS application suspension are premised on questions that you have raised in the separate proceeding involving the renewal of Regionet Call Sign WRV374. In that proceeding, you question whether Regionet complied with the AMTS construction and coverage requirements and whether it made unauthorized modifications to its licensed facilities. Although the

¹ See Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22621 ¶ 77, 22623 ¶ 88 (1998).

² To be specific, questions 1, 2, 3, 4, 5, 16, and 17, January 24, 2002 Petition for Declaratory Ruling at 9-17.

³ See 47 C.F.R. § 80.49(a)(3).

⁴ Under Section 80.475(a) of the Commission's Rules, site-based AMTS applicants who propose to serve a navigable inland waterway that is less than 150 miles in length must serve that waterway in its entirety. 47 C.F.R. § 80.475(a) (2001). On the other hand, site-based AMTS applicants who propose to serve a navigable inland waterway that is more than 150 miles in length must provide continuity of service for at least 60 percent of the waterway. *Id.*

⁵ See Regionet Wireless License, LLC, *Order on Reconsideration*, 16 FCC Rcd 19375 (WTB PSPWD 2001), application for review pending (filed Dec. 3, 2001).

questions in your petitions for declaratory ruling are phrased hypothetically, we previously concluded that you are in fact addressing the renewal of Regionet Call Sign WRV374.⁶ Consequently, we agree with Regionet that those questions are more appropriately confined to that proceeding.⁷

With respect to the remaining questions in your January 24, 2002 petition, we have broad discretion in determining whether to grant a petition for declaratory ruling.⁸ Some of the questions in your petition are unclear and/or extremely broad.⁹ We do not believe that attempting to answer these would "terminat[e] a controversy or remov[e] uncertainty."¹⁰ Therefore, we decline to address these issues. We will consider the other questions below.

AMTS definition. AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.¹¹ As an initial matter, our rules specifically define an AMTS as "an automatic, integrated and interconnected, maritime communications system."¹² You ask whether use of the word "interconnected" means that interconnection with the public switched telephone network (PSTN) is required, and, if so, whether this requirement applies even to AMTS stations carrying private coast station communications in lieu of public correspondence service,¹³ as permitted by Section 80.475(c) of the Commission's Rules.¹⁴ We conclude that the rules require interconnection to the PSTN.¹⁵ We also conclude that the requirement

⁶ See Letter, dated Apr. 17, 2002, from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to John Reardon, Esquire, Mobex Communications, Inc. (concluding that the petition for declaratory ruling is an *ex parte* presentation that should be entered into the record of the WRV374 proceeding and served on Regionet).

⁷ Moreover, the questions in your petitions for declaratory ruling that relate to Call Sign WRV374 amount to an untimely supplement to your pending application for review. See 47 C.F.R. § 1.115(d). See also Regionet Comments on January 24, 2002 Petition for Declaratory Ruling at 2 ("Havens's Petition is clearly an effort to raise an untimely collateral attack on authorizations granted to Regionet").

⁸ See, e.g., *Nevadacom, Order on Review*, 17 FCC Rcd 13157, 13158 n.11 (2002) (citing, e.g., *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973)).

⁹ Specifically, questions 6, 8, portions of 9, portions of 12, and 18, January 24, 2002 Petition for Declaratory Ruling at 10-17.

¹⁰ 47 C.F.R. § 1.2.

¹¹ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991).

¹² 47 C.F.R. § 80.5.

¹³ See question 9, January 24, 2002 Petition for Declaratory Ruling at 12.

¹⁴ 47 C.F.R. § 80.475(c).

¹⁵ See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Report and Order*, Gen. Docket No. 80-1, 84 FCC 2d 875, 881 ¶ 19 (1981) ("the proposed system should be automatically interconnected with the public telephone system") (*IWCS Report and Order*).

applies even if the station carries only private coast communications. When the Commission enacted the predecessor of Section 80.475(c), it did so to allow licensees to choose the type of service that they believed would best meet towboat and barge owners' needs. Significantly, the Commission did not indicate that any other rules or requirements, including the interconnection requirement, would apply differently to AMTS stations carrying private coast station traffic.¹⁶ We note, however, that although we require that each *system* be interconnected to the PSTN, we do not require that each base station in a system be individually interconnected to the PSTN. Consequently, so long as the ability to interconnect any mobile unit in contact with any base station is maintained, not every base station in a system needs to be interconnected. In addition, there is no requirement that all services offered by an AMTS operator include interconnection to the PSTN.¹⁷

You also seek guidance regarding the meaning of the word "integrated" in the AMTS definition.¹⁸ In the context of AMTS, the term "integrated" conveys the requirement that the base stations in an AMTS system must be connected, thereby ensuring seamless communication throughout the system for a vessel traveling along a served waterway.¹⁹

Construction requirement. Next, you ask several questions regarding Section 80.49(a)(3) of the Commission's Rules, which requires that AMTS public coast station licensees place the authorized stations or frequencies in operation within two years from the date of grant.²⁰ First, you ask whether the rule requires an AMTS licensee to place all of its authorized spectrum into operation in order to satisfy the construction requirement.²¹ The rule does not require this. It is sufficient to use only part of the channel block.²² However, sufficient spectrum must be put into operation to provide the authorized service.

In addition, you note that Section 80.49(a)(3) refers specifically to "AMTS band public coast station licensees," and you ask whether the rule nonetheless applies to AMTS stations that provide only

¹⁶ See *id.* at 900 ¶ 92.

¹⁷ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6701 ¶ 35 (2002) (expressly permitting non-interconnected mobile-to-mobile communications, under certain conditions).

¹⁸ See question 12(a), January 24, 2002 Petition for Declaratory Ruling at 14.

¹⁹ See *IWCS Report and Order*, 84 FCC 2d at 876 ¶ 4, 890 ¶ 50.

²⁰ 47 C.F.R. § 80.49(a)(3).

²¹ See question 7, January 24, 2002 Petition for Declaratory Ruling at 10-11.

²² See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Memorandum Opinion and Order*, Gen. Docket No. 80-1, 88 FCC 2d 678, 692-93 ¶¶ 51-55 (1981) (declining to require equipment to be capable of using all channels, so as to allow licensees to use the number of channels they deem appropriate); see also Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 11 FCC Rcd 5764, 5767 ¶ 10 (WTB PWD 1996) (approving AMTS applications that proposed to install channels in reverse order of frequency, installing the highest frequencies first and moving downward in frequency only as required by subscriber demand).

private coast station communications.²³ We conclude that the construction requirements in Section 80.49(a) apply to all stations governed by Subpart J (Public Coast Stations) of Part 80,²⁴ including AMTS stations carrying only private coast station communications. Again, we note that the Commission made no exception from the construction requirement for systems carrying only private coast station traffic.²⁵

Private coast station communications. You also raise several questions regarding what communications are permitted or required to be carried by AMTS stations providing private coast station communications in lieu of public correspondence service. Section 80.475(c) provides,

In lieu of public correspondence service an AMTS system may provide private coast station communications related to the operational requirements of ships including transmissions of fuel, weather, position and supply reports. However, such communications may be provided only to ship stations whose licensees make cooperative arrangements with the AMTS coast station licensees. In emergency and distress situations, service must be provided without prior arrangements.²⁶

First, you note that Sections 80.105,²⁷ 80.106,²⁸ and 80.141²⁹ of the Commission's Rules provide that a coast station must receive and acknowledge all calls directed to it by ship and aircraft stations, and you ask how these rules relate to the requirement in Section 80.475(c) of prior cooperative arrangements.³⁰ We conclude that the restriction in Section 80.475(c) applies to AMTS private coast stations, and controls over these more general provisions. In response to another question,³¹ we clarify that the communications services that must be provided in emergency and distress situations are not limited to the operational communications generally permitted pursuant to Section 80.475(c).

You also note that while Section 80.475(c) permits transmission of "private coast station communications related to the operational requirements of ships," Section 80.107 of the Commission's Rules authorizes private coast stations to transmit "messages necessary for the private *business and* operational needs of ships."³² You seek guidance as to whether this difference in terminology indicates

²³ See question 10, January 24, 2002 Petition for Declaratory Ruling at 10.

²⁴ 47 C.F.R. §§ 80.451-80.481.

²⁵ See *IWCS Report and Order*, 84 FCC 2d at 900 ¶ 92; see also Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22595 ¶ 17 (2000) (discussing AMTS construction period without distinguishing between stations carrying public and private correspondence).

²⁶ 47 C.F.R. § 80.475(c).

²⁷ 47 C.F.R. § 80.105.

²⁸ 47 C.F.R. § 80.106.

²⁹ 47 C.F.R. § 80.141.

³⁰ See questions 12-14, January 24, 2002 Petition for Declaratory Ruling at 14-15.

³¹ See question 15(a), January 24, 2002 Petition for Declaratory Ruling at 16.

³² 47 C.F.R. § 80.107 (emphasis added).

that AMTS private coast stations are limited by Section 80.475(c) to a narrower scope of communications than Section 80.107 permits for other private coast stations.³³ We conclude that there is no conflict between the rules. Rather, we believe that the reference in Section 80.475(c) to "private coast station communications" should be interpreted to permit the same transmissions authorized by Section 80.107.³⁴

Service to units on land. Section 80.123 of the Commission's Rules permits AMTS stations to provide service to units on land, under certain conditions.³⁵ You ask whether an AMTS licensee may provide private coast station communications to units on land.³⁶ As set forth above, the communications permitted by Section 80.475(c) are specifically limited (in non-emergency situations) to "private coast station communications related to the operational requirements of ships."³⁷ Consequently, we do not believe that AMTS stations are permitted to provide private communications to stations on land.³⁸

Finally, you ask whether the requirement in Sections 80.105, 80.106, and 80.141 that a coast station must receive and acknowledge all calls directed to it by ship and aircraft stations also applies to calls from land units.³⁹ Section 80.123 provides that land units may communicate only with their associated base station(s),⁴⁰ and this association requires a prior written arrangement.⁴¹ Similarly to our conclusion above with respect to AMTS private coast stations, we conclude that the restrictions in Section 80.123 apply to AMTS coast stations serving units on land, and control over these more general provisions. With respect to another issue you raise,⁴² however, we note that the requirements of Sections 80.105, 80.106, and 80.141 do apply to AMTS public coast stations communicating with vessels in their vicinity but outside the confines of the served waterway. Further, we believe that nothing in the rule⁴³

³³ See question 15(b), January 24, 2002 Petition for Declaratory Ruling at 16.

³⁴ Cf. *IWCS Report and Order*, 84 FCC 2d at 899-900 ¶ 91 ("The parties directly concerned with an [AMTS] are in the tow and barge business, not the communications business, and are primarily concerned with communications as a support function.").

³⁵ 47 C.F.R. § 80.123.

³⁶ See question 11, January 24, 2002 Petition for Declaratory Ruling at 14.

³⁷ 47 C.F.R. § 80.475(c) (emphasis added).

³⁸ Moreover, when the Commission adopted Section 80.123, which specifically mentions only "public coast stations," it did so in order to "foster a regulatory environment in which public coast stations may more effectively compete against other CMRS providers, such as cellular, PCS, and SMR, operating in coastal areas." Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16965 ¶ 24 (1997) (*Public Coast Second Report and Order*). Private coast stations do not compete with CMRS providers. Thus, both the language of Section 80.123 and its underlying purpose indicate that private communications to units on land are not authorized.

³⁹ See questions 12-14, January 24, 2002 Petition for Declaratory Ruling at 15.

⁴⁰ See C.F.R. § 80.123(f); *Public Coast Second Report and Order*, 12 FCC Rcd at 16966 ¶ 26.

⁴¹ 47 C.F.R. § 80.123(a).

⁴² See questions 12-14, January 24, 2002 Petition for Declaratory Ruling at 15.

⁴³ 47 C.F.R. § 80.477(c).

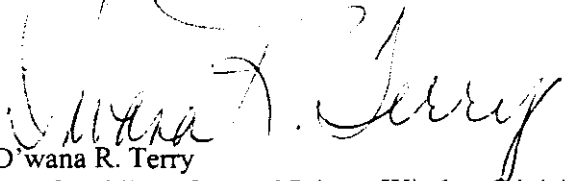
permitting service to such vessels, or the proceeding adopting that rule,⁴⁴ suggests that Part 80 applies any differently to communications with such vessels.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, the petition for declaratory ruling filed by Warren C. Havens on January 24, 2002 is GRANTED IN PART AND DENIED IN PART to the extent indicated above.

IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, the petition for declaratory ruling filed by Warren C. Havens on March 14, 2002 is DENIED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION


D'wana R. Terry
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⁴⁴ See Amendment of Parts 2, 81 and 83 of the rules to add the Gulf Intracoastal Waterway to the authorized service area of Inland Waterways Communications Systems, *Report and Order*, GEN Docket No. 81-822, 51 R.R. 2d (P&F) 440, 443 ¶ 15 (1982).